PRIVY COUNCIL REPORT

HOE JOO SAWMILLS v. SIGMA (AIR CONDITIONING) SDN. BHD.

[Privy Council (Lord Diplock, Lord Bridge of Harwich, Sir John Megaw & Sir Owen Woodhouse) July 28, 1981]

[Privy Council Appeal No. 15 of 1980]

Practice and Procedure — Appeal — Special leave to appeal out of time — Privy Council.

In this appeal from the decision of the Federal Court ([1979] 2 M.L.J. 236) the Board confirmed the rule that it would be reluctant to interfere with decisions of local courts upon matters of procedure.

Case referred to:-

(1) *Ratnam* v. *Cumarasamy & Anor.* [1965] 1 M.L.J. 228; [1965] 1 W.L.R. 8.

PRIVY COUNCIL APPEAL FROM THE FEDERAL COURT OF MALAYSIA.

Sir Charles Fletcher-Cook Q.C. (*K.S. Nathan & Miss G. Ambiaviagar* with him) for the appellant.

Anthony Colman Q.C. (*Angus Glennis* with him) for the respondent.

Lord Diplock (delivering oral judgment of the Board): This is an appeal from an order of the Federal Court of Malaysia refusing special leave to appeal out of time from the judgment of the High Court in Malaya at Kuala Lumpur. In the case of *Thamboo Ratnam* v. *Thamboo Cumarasamy,*[1] which was a similar application in Malaysia, this Board expressed its reluctance to interfere with decisions of local courts upon matters of procedure. I cite a passage in the advice given in that case (at page 12) for it applies precisely to this case: "Their Lordships are satisfied that to allow this appeal would be substantially to interfere with the practice of the Board in regard to applications of this nature. The Board is not familiar with the practice in local courts and their Lordships are most unwilling to interfere with the exercise of their discretion upon questions of procedure". Their Lordships see no reason for departing from that salutary rule and they will advise His Majesty the Yang di-Pertuan Agong that this appeal should be dismissed with costs.

Appeal dismissed.

Solicitors: *Graham Page & Co.; Simmons & Simmons.*

SINGAPORE REPORTS

IN THE MATTER OF AN ADVOCATE & SOLICITOR*

[O.C.J. (Wee Chong Jin C.J., Kulasekaram & Chua JJ.) August 27, 1981]

[Singapore — Originating Summons No. 55 of 1981]

Legal Profession — Advocate and solicitor — Grossly improper conduct — Delay in reporting employee's criminal misappropriation — Restitution as motive — Investigation — Scope — Punishment — Legal Profession Act (Cap. 217), ss. 84(2)(b), 87(5) & 93(1).

The respondent, an advocate and solicitor of some 30 years standing and at the material time the President of the Law Society of Singapore, appeared before the Disciplinary Committee of the Law Society to show cause on the charge that his delay in reporting to the Law Society his legal assistant's criminal breach of trust of clients' monies amounted to grossly improper conduct in the discharge of his professional duty within the meaning of section 84(2)(b) of the Legal Profession Act.

The respondent admitted that his legal assistant named Santhiran had in March 1976 admitted to him that he, Santhiran, had misappropriated sums totalling $298,270.75 from the clients' account of Braddell Brothers of which firm the respondent was the sole proprietor; that between March 9 and June 10, 1976, Santhiran, with the knowledge and encouragement of the respondent had made restitution to the firm of $297,556.72 in respect of the monies misappropriated; that Santhiran was allowed to continue his employment in the firm as an Advocate & Solicitor until he left the service of his firm on December 21, 1976; and that the respondent did not report to the Law Society the conduct of Santhiran until April 30, 1977.

The respondent, though admitting that the delay of 13 months in reporting Santhiran's defalcations to the Law Society was "*prima facie* far too long" sought by giving evidence and calling witnesses to justify the delay and contended that it was a mere error of judgment.

The Disciplinary Committee found that the delay of 13 months was not an error of judgment but a premeditated scheme of delay; that the motive for the deliberate long delay was to obtain restitution from Santhiran; that the respondent took great pains to ensure that the object of his scheme was not prejudiced by any premature disclosure; that the method adopted by the respondent to achieve his purpose was dishonourable and that there was cause of sufficient gravity for disciplinary action against the respondent under section 84 of the Legal Profession Act.

At the hearing before the court of the Law Society's application for the respondent to be dealt with under section 84 of the Act, it was contended on behalf of the respondent, that the Disciplinary Committee wrongly went outside the complaint by inquiring into the alleged consequences of the failure to report; that in any case they attached far too much weight to them in all the circumstances of the case and that the Disciplinary Committee ignored a large amount of unchallenged evidence that was favourable to the respondent.

Held: (1) the Disciplinary Committee, on the evidence before it, was amply justified in disbelieving the respondent's explanation for the delay and in finding that the motive for the respondent's delay in reporting promptly to the Law Society was to obtain total restitution from Santhiran;

(2) as the respondent's defence was that he had an explanation for the long delay in reporting the defalcations which showed that he had committed an error of judgment and no more and that as a matter of law the long delay did not amount to "grossly improper conduct", the Disciplinary Committee could properly inquire into the respondent's motive for the admitted delay and into the consequences of such delay;

(3) the respondent was guilty of grossly improper conduct in the discharge of his professional duty within the meaning of section 84(2)(b) of the Legal Profession Act;

* Leave to appeal to the Privy Council was granted.

(4) having regard to all the circumstances,. the respondent is ordered to be suspended from practice for a period of two years.

In the Matter of an Advocate and Solicitor[1] distinguished.

Case referred to:-

(1) *In the Matter of an Advocate and Solicitor* [1978] 2 M.L.J. 7.

ORIGINATING SUMMONS.

J. Grimberg for the Law Society.

C.W.G. Ross-Munro (*David Wee* with him) for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J. (delivering the judgment of the Court): The respondent, Harry Wee, is a senior member of the legal profession. He was admitted as an advocate and solicitor of the Supreme Court in 1948 and has since been in continuous practice. He was President of the Law Society for three years from 1975 to 1977 and during this period and for many years previously he practised under the firm name of Braddell Brothers of which he is the sole proprietor.

In 1971 he employed S. Santhiran, an advocate and solicitor, as a legal assistant in Braddell Brothers. In February 1976 he became aware that Santhiran had misappropriated monies from the Clients' Account of Braddell Brothers and on March 8, 1976 he was informed by his stenographer and office assistant, Miss Lisa Choo, that Santhiran's misappropriations exceeded $200,000.

On the same day or the following day Santhiran confessed and admitted that the sums misappropriated totalled $298,270.75 and between March 9 and 18, 1976, Santhiran made restitution amounting to $267,956.12. After Santhiran had admitted the misappropriations and made restitution of $267,956.12 the respondent decided to delay reporting Santhiran's misdeeds to the police or to the Law Society and entrusted the investigation of the exact extent of Santhiran's misappropriations and the clients whose monies in the Clients' Account had been affected to Miss Lisa Choo and a legal assistant in the firm, Miss Chan Lai Meng, an advocate and solicitor of two years' standing.

After discovery of Santhiran's misdeeds the respondent kept Santhiran in his employment for the purpose of winding-up unfinished matters, closing up files and putting up notes on those that were on-going. In the course of such duties, Santhiran, to the knowledge of the respondent, also appeared in the courts and also handled new matters as a legal assistant of Braddell Brothers.

By June 10, 1976, the total restitution made by Santhiran amounted to $297,956.12. At the end of August 1976 Miss Lisa Choo reported to the respondent that she could not continue the investigation.

In November 1976, the respondent with the agreement of Santhiran, appointed a firm of accountants, Medora, Tong & Co. to inspect and audit the accounts in which Santhiran was involved. This appointment was not disclosed by the respondent to Braddell Brothers' long-standing auditors, Turquand Youngs. The respondent also did not inform his regular auditors of Santhiran's misappropriations from the clients' account.

In December 1976, when the respondent was absent from Singapore, Santhiran ceased his employment with Braddell Brothers by which time he had made total restitution of all clients' money he had misappropriated and any outstanding shortage in the Clients' Account consisted of costs belonging to Braddell Brothers. Santhiran then set up a practice on his own and the respondent first knew this in January 1977.

On April 30, 1977 the respondent wrote a letter marked "Private and Confidential" to the Law Society, attention Mrs. Quek Bee See, who was then the vice-president of the Law Society. The letter reads: —

"Dear Sirs,

I have to inform you that certain defalcations and misappropriations of moneys from various clients' accounts and costs in my firm appears to have been carried out by S. Santhiran a former employee of this firm. Investigations were initially carried out by members of my firm and subsequently undertaken by independent auditors, M/s. Medora Tong & Co. who have produced a report.

They and our usual auditors M/s. Turquand Youngs & Co. have just completed the report under the Solicitors' Accounts Rules. I enclose a copy of their joint report which is a qualified report.

I will shortly be presenting the complaint against S. Santhiran for action to be taken but currently he has since the said report made certain representations or supplied information to M/s. Medora Tong & Co. which will have to be in the form of a supplementary report to M/s. Medora Tong & Co's report and which will have to be read with the joint report."

On May 26, 1977 the respondent reported Santhiran's defalcations to the police and on May 27, 1977 wrote a letter marked "Private and Confidential" to the Law Society as follows: —

"Dear Sirs,

re: *S. Santhiran*

I refer to my letter dated 30th April, 1977 and now enclose my Complaint against the abovenamed.

I have made a report to Commercial Crime on this matter."

The "Complaint" is a nine page typewritten document to which is annexed several "exhibits". One exhibit is the Preliminary Report of Medora, Tong & Co. and another is the Supplementary Report of Medora, Tong & Co. which gives the sum of $372,109.90 as the estimated amount which appears to have been unlawfully transferred and the sum of $297,956.12 as the amount which Santhiran returned to Braddell Brothers.

The facts which we have set out are undisputed. They show that the respondent delayed for a period of approximately fourteen months before reporting to the Law Society that Santhiran, a legal assistant of his firm and a practising member of the profession had admitted committing criminal breach of trust. The undisputed facts further show that the respondent continued to keep in his employment as a qualified legal assistant of his firm with authority to handle legal work both in the office and in the courts on behalf of clients of the firm. The respondent, even after he became aware that Santhiran had set up a practice on his own, continued to delay for four months

to report Santhiran's misdeeds to the Law Society and to the police.

The respondent vacated office as President of the Law Society in December 1977. On March 18, 1978 the new President as Chairman of the Inquiry Committee of the Law Society wrote to the respondent as follows: —

"Dear Sir,

The Inquiry Committee has decided of its own motion to inquire into your conduct in the following matters: —

(a) the delay in reporting the defalcations in the accounts of Messrs. Braddell Brothers of which firm you were at the material time the sole proprietor;

(b) the statement made by Mr. Jamshid Medora to the Police to the effect that you had asked him (in his capacity as your firm's Accountant) on at least two (2) occasions to speak to Mr. Santhiran (your former Assistant) informing Santhiran that as long as he admitted the defalcations and applied on his own motion to have his name struck off the Roll of Advocates and Solicitors and satisfied you of repayment of the balance of the moneys taken by him, that you would not report the matter to the Police and prefer charges against Mr. Santhiran.

In respect of (a) aforesaid, according to the report made by you to the Law Society dated 27th March 1977, the first defalcations were discovered in February 1976 and Mr. Santhiran was said to have admitted sometime in March 1976 that he had wrongfully transferred and taken or was unable to support items totalling $298,270.75. Further you say in your report that between 9th March 1976 and 10th June 1976, Mr. Santhiran repaid sums up to a total of $297,956.12 to Messrs. Braddell Brothers for the defalcations on the firm's Clients' Account.

In respect of (b) aforesaid, I enclose herewith xerox copy of a letter dated the 17th February 1978 from ASP Roger Lim Cher Kwan for the Head of the Commercial Crime Division, Criminal Investigation Department, Singapore, addressed to the President of the Law Society, together with xerox copies of the enclosures mentioned therein, including the statement by Mr. Jamshid Medora made to Det/Insp Wong Chou Nen on the 1st November 1977.

Please be good enough to let me have any explanation you wish to offer in respect of the above within fourteen (14) days in accordance with section 87(5) of the Legal Profession Act and also advise the Inquiry Committee whether you wish to be heard by the Inquiry Committee.

For the convenience of the Inquiry Committee please let me have your explanation in septuplicate.

Yours faithfully,

Sd: Phyllis P.L. Tan
Chairman."

The respondent gave a written explanation and also appeared before the Inquiry Committee of the Law Society in May 1978. On July 20, 1978 he was informed by a letter from the Secretary of the Law Society that the Council had accepted the finding of the Inquiry Committee that there shall be a formal investigation by a Disciplinary Committee into the following complaint against him, viz: —

"Failure to report the criminal breach of trust committed by Mr. S. Santhiran when he was a Legal Assistant in the firm of Braddell Brothers to the Law Society earlier."

A Disciplinary Committee, upon an application by the Council to the Chief Justice under section 90 of the Legal Profession Act, was appointed to hear and investigate the complaint against the respondent. Of the three members of the Disciplinary Committee two were former Presidents of the Law Society.

The case against the respondent before the Disciplinary Committee was set out in an Amended Statement of Case which reads as follows: —

"*Amended Statement of Case*

(1) Harry Lee Wee (hereinafter called 'the Respondent'), an Advocate and Solicitor of the Supreme Court of the Republic of Singapore of some thirty years standing, practises, and has at all material times practised, under the name and style of Braddell Brothers (hereinafter called 'the Firm'). The Respondent was at various times a member of the Council of the Law Society of Singapore, and was the President of the Law Society for the period 1975 to 1977, inclusive.

(2) In or about 1971, one S. Santhiran, an Advocate and Solicitor (hereinafter called 'Santhiran'), entered employment with the Firm as a legal assistant.

(3) In or about February 1976, the Respondent had reason to believe that Santhiran had misappropriated, in aggregate, a substantial sum standing to the credit of the Clients account of the Firm.

(4) In or about March 1976, Santhiran admitted to the Respondent that he, Santhiran, had misappropriated or otherwise misapplied sums totalling $298,270.75 from the Clients account of the Firm.

(5) Between the 9th March 1976 and the 10th June 1976, Santhiran, with the knowledge and encouragement of the Respondent, made restitution to the Firm of $297,956.12 in respect of monies misappropriated or otherwise misapplied by Santhiran as aforesaid.

(6) In or about November 1976, the Respondent appointed Medora and Tong, a firm of public accountants (hereinafter called 'the Accountants') to inspect the accounts of the Firm with a view to ascertaining the extent of the misappropriation or misapplication of funds by Santhiran from its Clients account.

(7) Notwithstanding the facts referred to in paragraphs 3 to 6 inclusive of this Statement of Case, the Respondent failed to make a report to the Law Society concerning the conduct of Santhiran, who continued in the employment of the Firm as an Advocate and Solicitor, albeit without salary, until he left the service of the Firm on the 21st December, 1976.

(8) The Accountants delivered their reports to the Respondent on or about the 25th May, 1977. The Respondent first reported the conduct of Santhiran to the Police on or about the 26th May, 1977, and wrote to the Law Society with reference thereto on the 30th April, 1977.

(9) Santhiran was charged on five charges under section 408 of the Penal Code. One charge was proceeded with, the prosecution asking for the remaining four charges to be taken into consideration. Santhiran was convicted on the 10th May, 1978 and sentenced to 9 months imprisonment, having admitted the facts pertaining to the charge that was proceeded with, and having consented to the four remaining charges being taken into consideration.

(10) By reason of the facts referred to in paragraphs 2 to 8 hereof (inclusive), the Respondent was guilty of grossly improper conduct in the discharge of his professional duty within the meaning of section 84(2)(b) of the Legal Profession Act.

(11) It is submitted that the Respondent should be dealt with under section 84(1) of the Legal Profession Act."

At the commencement of the hearing the Disciplinary Committee was informed that the facts set out in paragraphs 1 to 9 of the Amended Statement of Case were agreed facts. In his opening counsel for the Law Society said: —

"The case of the Law Society is that the Respondent's delay in reporting Santhiran's criminal breach of trust of clients' monies to the Law Society amounted to grossly improper conduct in the discharge of his professional duty within the meaning of section 84(2)(b) of the Legal Profession Act."

The Law Society, relying on the respondent's admission of the facts set out in the Amended Statement of Case, called no evidence and rested its case, in the words of its counsel, as follows: —

"As a solicitor of some 30 years' standing and as President of the Law Society it must have been obvious to him that the proper and honourable course, irrespective of what loss might occur to the President himself, was to report Santhiran's misconduct to the Law Society as soon as it was discovered."

The respondent, though admitting in the words of his counsel that on any showing the delay of 13 months before he orally informed the Vice-President of the Law Society of Santhiran's defalcations was "*prima facie* ... far too long", sought by giving evidence and calling witnesses to try and justify the delay and to support his contention that it was a mere error of judgment on his part. It was also contended on his behalf that even if the delay amounted to a gross error of judgment, such delay according to decided authorities, did not amount to grossly improper conduct within the meaning of section 84(2)(b) of the Legal Profession Act.

As the respondent had indicated the nature of his defence, the Law Society took the view (which view was disputed) that it was entitled to address the Disciplinary Committee in opening and to cross-examine the respondent if he chose to give evidence before the Disciplinary Committee to explain the admitted delay in reporting to the Law Society on the merits and truthfulness of the respondent's explanations for the admitted delay and his motive for the delay.

The Law Society also took the view (which was also disputed) that the Disciplinary Committee was entitled to consider for the purposes of its investigation the natural and probable consequences of the respondent's admitted delay in reporting to the Law Society.

Consequently, the Disciplinary Committee was invited to determine "as preliminary issues" the following questions: —

"(1) Whether you are entitled to consider for the purposes of this investigation the natural and probable consequences of the respondent's admitted delay in reporting to the Law Society?

(2) Whether Counsel for the Law Society is entitled to address you in opening and to cross-examine the respondent if he chooses to give evidence on the merits and truthfulness of the respondent's explanations for the admitted delay and the respondent's motive for it?."

The Disciplinary Committee ruled in favour of the Law Society.

After hearing the evidence of the respondent and the witnesses called on his behalf the Disciplinary Committee found the delay of 13 months before the respondent orally informed the Vice-President of the Law Society, of which he was then the President, was not an error of judgment but a premeditated scheme of delay. The Disciplinary Committee found that the respondent, having decided to delay making a report to the Law Society, took great pains to ensure that the object of his scheme would not be prejudiced by any premature disclosure. The Disciplinary Committee found that the motive for the deliberate long delay was for the purpose of obtaining restitution from Santhiran and that the method adopted by the respondent to achieve his purpose was dishonourable.

The Disciplinary Committee also found that the consequences of the respondent's long delay in reporting Santhiran's defalcations were —

(1) Santhiran was able to continue to practise as a legal assistant in the respondent's firm, to see clients and to accept new business for the firm and on leaving the firm to set up his own practice in January 1977 and obtain files of old clients from the respondent;

(2) Santhiran was able to obtain without any hindrance a practising certificate for the year commencing April 1, 1976; and

(3) Santhiran was able to obtain a practising certificate for the year commencing April 1, 1977.

In the result, the Disciplinary Committee found that cause of sufficient gravity for disciplinary action against the respondent exists under section 84 of the Legal Profession Act.

The respondent now appears before us to show cause why he should not be dealt with under section 84 of the Legal Profession Act. He relies on four main submissions which are —

(1) The Disciplinary Committee wrongly allowed the Law Society to put forward an affirmative case that the respondent's motive for failing to report was dishonourable.

(2) The Disciplinary Committee wrongly went outside the complaint that they were called upon to investigate in order to inquire into the alleged consequences of the failure to report.

(3) Alternative to (2), if the Disciplinary Committee were entitled to consider these consequences they attached far too much weight to them in all the circumstances of the case.

(4) The Disciplinary Committee ignored a large amount of unchallenged evidence that was favourable to the respondent and drew inferences unfavourable to him which they were not entitled to do.

We will deal with the fourth submission first. The respondent's main defence was that after Santhiran had made restitution of $267,956.12 within 10 days after having admitted misappropriating $298,270.75 from the clients' account of the firm, he became worried over the problem of how the sums misappropriated could be identified as belonging to which clients. He decided he had to obtain Santhiran's co-operation for the purpose of solving the problem and with this object in view he decided to delay reporting Santhiran's defalcations to the Law Society and the Police. His view was that neither the Law Society nor the Police would be able to achieve that objective as Santhiran would not co-operate with them.

The Disciplinary Committee disbelieved the respondent's explanation for the delay in reporting. In their long and careful Report of their findings and determination the Disciplinary Committee said: —

"We would have expected a person who had attained the position of President of the Law Society for two years and of some years' standing as a member of the Council to maintain a higher standard of forthrightness not only in his oral

evidence, but also in his conduct and correspondence over this matter. Unfortunately, they are all littered with attempts to either cover up or embellish the facts, and we are obliged to disbelieve his explanation that his delay in reporting was motivated by the lofty objective given in respect of the first eight months and transformed into an entirely new motive after November 1976."

In our opinion, having disbelieved the respondent's explanation for the delay in reporting promptly Santhiran's defalcations, the Disciplinary Committee was entitled from the evidence before them to draw the inference that the respondent's motive for the long delay in reporting to the Law Society was his intention to obtain full restitution of the misappropriated monies from Santhiran.

There was evidence that by November 1976 the clients to whom the sum of approximately $297,000 (which amount Santhiran had repaid by June 1976) belonged to had been identified and that by November 1976 the respondent thought that whatever monies remained to be recovered from Santhiran was the firm's money. The first report to the Law Society was in March 1977 which was five months after all the firm's clients had been identified and all clients' monies had been recovered. The Disciplinary Committee was, in our opinion, amply justified in disbelieving the respondent's explanation for the delay and in finding that the motive for the respondent's delay in reporting promptly to the Law Society was to obtain total restitution from Santhiran.

We would add that in our opinion no court, in the particular circumstances of this case, would lightly disregard the findings of fact by a committee of three senior practising members of the profession, two of whom have been Presidents of the Law Society. We accept their findings.

We deal now with the first and second submissions. Sections 87(5) and 93(1) of the Legal Profession Act read as follows: —

"S.87(5) Before any inquiry or investigation begins in respect of any matter —

(a) the Inquiry Committee shall post or deliver to the advocate and solicitor concerned —

(i) ....

(ii) a notice setting out any or any further particulars that may be necessary to disclose the reason for the inquiry or investigation...."

"S.93(1) After hearing and investigating any matter referred to it a Disciplinary Committee shall record its findings...."

It is contended that a Disciplinary Committee can only hear and investigate matters which are referred to it and that in this case the only matter that was referred to the Disciplinary Committee was the respondent's failure to report earlier to the Law Society the criminal breach of trust committed by Santhiran when he was a legal assistant in the respondent's firm. The submission, as we understand it, is that the matter which the Disciplinary Committee was empowered to hear and investigate was whether the delay of 13 months in reporting Santhiran's defalcations amounted to improper conduct. If that was so, it is further submitted that by inquiring and investigating into the motive for the delay — which is admitted — and the consequences of the delay, which were matters not specifically referred to it by the Council, the Disciplinary Committee had erred fundamentally. The respondent relied on the case of *In the Matter of an Advocate and Solicitor*.[1]

We reject this submission. The case relied on is clearly distinguishable. In that case the matter referred by the Council to the Disciplinary Committee was the complaint against the solicitor of payment of monies to a tout for bringing in accident cases. Subsequent to the appointment of the Disciplinary Committee to hear and investigate into that matter (or complaint or charge) the Law Society in their Amended Statement of the Case alleged that the solicitor had received or accepted payment of monies from two accident victims for so acting other than taxed costs in contravention of the Motor Vehicles (Third Party Risks and Compensation) Act. The court held that these new allegations were matters which had not been specifically referred to the Disciplinary Committee by the Council and that under section 93(1) of the Legal Profession Act the Disciplinary Committee can only investigate matters referred to it by the Council.

In the present case the matter referred by the Council to the Disciplinary Committee was the respondent's failure to report *earlier* the criminal breach of trust by Santhiran, a legal assistant in the respondent's firm. This was the very matter which the Inquiry Committee in their notice by the letter of March 18, 1978 to the respondent was inquiring into. The respondent's motive for the admitted delay of thirteen months would have been highly relevant to whether the conduct complained of was improper conduct and, if so, was "grossly improper conduct" within the meaning of section 84 of the Act. So too would the consequences which flow from the admitted delay.

It is to be observed that the respondent's line of defence, which was made known to the Law Society at the commencement of the proceedings before the Disciplinary Committee, was that he had an explanation for the long delay in reporting Santhiran's defalcations to the Law Society which would show that the respondent had committed an error of judgment and no more and if so, would not, as a matter of law, amount to "grossly improper conduct".

In those circumstances we are of the opinion that the Disciplinary Committee could properly inquire into the respondent's motive for the admitted delay and into the consequences of such delay.

The third submission is that the Disciplinary Committee attached far too much weight to the consequences of the delay in all the circumstances of the case. We do not propose to deal with the submission in support of this contention except to say that, apart from the consequences, we accept the findings of fact and the inferences from the facts made by the Disciplinary Committee.

It follows that we are satisfied that the respondent has been guilty of grossly improper conduct in the discharge of his professional duty within the meaning of section 84(2)(b) of the Act.

With regard to the penalty we cannot disregard the fact that the respondent was at all material times

the incumbent President of the Law Society, that the delay was premeditated, that the respondent took great pains to ensure that the object of his scheme would not be prejudiced by premature disclosure and that the method adopted to achieve his purpose was dishonourable. We cannot disregard the fact that the respondent, to whom his legal assistant had admitted criminal breaches of trust in respect of clients' monies held by the firm, did not immediately report the matter to the Law Society but continued to allow the offender to actively practise his profession as a member of the respondent's firm in order to enable the respondent to obtain full restitution from the offender.

Having regard to all these circumstances our order is that the respondent be suspended from practice for a period of two years. The respondent must pay the costs.

Order accordingly.

LEE KENG KEE v. THE ATTORNEY-GENERAL, SINGAPORE

[O.C.J. (Rajah J.) November 25, 1980]
[Singapore — Suit No. 2751 of 1978]

Administrative Law — Rules of natural justice — Dismissal of police inspector as a result of disciplinary action taken against him — Letter of dismissal from Acting Permanent Secretary silent on plaintiff's guilt on charges — Whether there was compliance with regulations and rules of natural justice — Police Force Act (Cap. 78), ss. 26, 27 28 & 28A — Public Service (Disciplinary Proceedings) Regulations, 1970, reg. 4 — Constitution of Singapore (Reprint 1980), arts. 102(1), 110(3) & (4) — Constitution of Malaysia, arts. 132(2A), 135(1) & (2).

Constitutional Law — Natural justice — Police inspector — Right of being heard — Scope of art. 110(3), Constitution of Singapore (Reprint 1980).

Police Force — Tenure of police inspector — "A person holding office" — Natural justice requirement before dismissal — Police Force Act (Cap. 78), ss. 26, 27, 28 & 28A.

The plaintiff in this case was an inspector in the police force. By a letter dated April 6, 1977, the Acting Permanent Secretary of the Ministry of Home Affairs informed him that disciplinary proceedings under regulation 4 of the Public Service (Disciplinary Proceedings) Regulations 1970 had been commenced against him on the three charges stated therein. On April 26, 1977 the plaintiff submitted to the Public Service Commission his exculpatory statement, denying all the said three charges. The Commission not finding the exculpatory statement satisfactory, appointed a committee of Inquiry under the said regulation 4. Thereafter correspondence ensued between the Chairman of the Committee and the plaintiff regarding the procedural aspects of the pending inquiry. On September 6, 8 and 9, 1977 the plaintiff appeared by counsel before the Committee of Inquiry. On December 7, 1977 the plaintiff received a letter from the Acting Permanent Secretary, Ministry of Home Affairs, stating that he had been dismissed from the service with effect from the day following the date the said letter was received by him. The said letter was silent on the plaintiff's guilt on the said charges. On May 24, 1978, the plaintiff's solicitors inquired of the Permanent Secretary the charges on which the plaintiff had been found guilty. A reply was received saying that the plaintiff had been found guilty on two of the said charges.

The plaintiff commenced the present action and contended, *inter alia,* that the proceedings before the Committee of Inquiry were conducted in breach of the Regulations and were contrary to the rules of natural justice thereby rendering any finding or decision based on the said proceedings null and void. He also contended that the Public Service Commission had contravened the provisions of article 78(3) of the Constitution of Singapore (art 110(3) of the Reprint edition) by not giving him a reasonable opportunity of being heard before he was dismissed from the Police Force.

The present court also found that (1) the Committee had no power or authority to deal with, nor did it invite submissions on punishment; (2) no submissions were made by the plaintiff to the Committee as to punishment; (3) there was no invitation by the Public Service Commission to the plaintiff either to address them on punishment or to show cause why he should not be dismissed.

Held, allowing the plaintiff's application: (1) a police inspector's tenure of office is governed by the Police Force Act (Cap. 78). He falls under a class of persons "holding office where there must be 'something' against him to warrant his dismissal." In this class of cases an officer cannot lawfully be dismissed without first telling him what is alleged against him and hearing his defence or explanation;

(2) what article 110(3) of the Singapore Constitution (Reprint) does for an Inspector of Police is that it entrenches in the Constitution the right of being heard before dismissal or reduction which he had previously enjoyed under the Police Force Act;

(3) it is settled law that both in Malaysia and Singapore the phrase "of being heard" does not mean an actual hearing in the way the plaintiff was afforded a hearing when he was answering the three charges. The said article 110(3) would have been satisfied had the public officer been afforded an opportunity to present his views on punishment to the Public Service Commission;

(4) as the opportunity to be heard had not been afforded to the plaintiff at the inquiry stage then that opportunity should have been provided sometime between the termination of the inquiry and the imposition of the punishment or penalty. The opportunity not having been so provided the rule of fairness was broken and any punishment or penalty imposed in such circumstances is against the rules of natural justice;

(5) the purported dismissal of the plaintiff in this case was null and void and must be set aside.

Obiter dictum: "... if the PSC does not wish to delegate both its powers of inquiry and of punishment to a committee then it should take appropriate steps to comply with the provisions of article 110(3) of the present Constitution. In the circumstances similar to the instant case ... the P.S.C. would avoid contravention of the Article if they were either, to write to the public officer concerned asking him what he has to say on punishment, or, to invite him to show cause why a certain punishment such as dismissal, should not be imposed in respect of the charge or charges on which he had been found guilty."

Cases referred to:-

(1) *Priddle* v. *Fisher & Sons* [1968] 1 W.L.R. 1478, C.A.
(2) *University of Ceylon* v. *Fernando* [1960] 1 All E.R. 631, P.C.
(3) *R.* v. *General Medical Council, Ex parte Spackman* [1942] 2 All E.R. 150.
(4) *Ridge* v. *Baldwin* [1963] 2 All E.R. 66.
(5) *Ling How Doong* v. *Attorney-General* [1968] 2 M.L.J. 253; [1969] 1 M.L.J. 154, F.C.
(6) *Jacob* v. *Attorney-General* [1970] 2 M.L.J. 133.
(7) *Sithambaran* v. *Attorney-General* [1972] 2 M.L.J. 175.
(8) *Najar Singh* v. *Government of Malaysia & Anor.* [1976] 1 M.L.J. 203, P.C.

CIVIL SUIT.

J.B. Jeyaretnam for the plaintiff.

Chao Hick Tin (Senior State Counsel) for the defendant.

Cur. Adv. Vult.

Rajah J.: The plaintiff became a member of the Singapore Police Force as a constable recruit in December 1965 and was confirmed in the rank of constable in 1966. His service with the Police Force was